# STATE OF MICHIGAN

# COURT OF APPEALS

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| PATRICIA J. WAGNER and LYNN W. WAGNER,<br><br>Plaintiffs-Appellants,<br><br>v<br><br>LYONS-MUIR CHURCH,<br><br>Defendant-Appellee. | UNPUBLISHED<br>October 25, 2005<br><br><br><br>No. 262496<br>Ionia Circuit Court<br>LC No. 04-023382-NO |

Before: Kelly, P.J., and Meter and Davis, JJ.

PER CURIAM.

In this premises liability case, plaintiffs appeal as of right from an order granting summary disposition to defendant under MCR 2.116(C)(10). We reverse and remand.

Plaintiff Lynn Wagner (Lynn) had been employed by defendant as a pastor. As part of his compensation, he and his wife, plaintiff Patricia Wagner (Patricia) lived free-of-charge at defendant's parsonage. Lynn's employment with defendant began in July 2001, and he and Patricia moved to the parsonage at the end of June 2001. On September 1, 2002, Lynn retired, and he and Patricia were in the process of moving from the parsonage when, on October 15, 2002, Patricia fell on the basement stairs as she was descending them to retrieve some packing boxes.[1] She stated that she was "watching every step" at the time of the fall because she had "the sense . . . [that] the stairs were not particularly safe[.]" She testified that she planted her feet firmly on the steps but that she could "feel [her] feet rolling forward." She testified that she fell forward and had "nothing to grab" to abort her fall. Patricia indicated that she sustained injuries from the fall and that many of her daily activities are now restricted because of an injury to her right arm.

Betty Couchman, Patricia's mother, testified that she had been helping Patricia pack on the day in question. Couchman testified that, immediately after Patricia's fall, she (Couchman)

[1] After Lynn's retirement, plaintiffs were allowed to stay in the parsonage free-of-charge until they found another home.

noticed that the third stair from the bottom had a freshly broken edge. Couchman indicated that the stair had not been broken when she and Patricia started down the stairs before Patricia's fall.

In April 2004, plaintiffs sued defendant, alleging, among other things, that defendant violated a duty "to provide reasonably safe staircases [sic] used as the means of ingress and egress to [and from] the basement area of its building." In March 2005, defendant moved for summary disposition under MCR 2.116(C)(8) and (10), alleging that plaintiffs had merely been licensees at the time of Patricia's fall and were thus owed a lower standard of care than if they had been invitees. Defendant argued that it did not breach the lower standard of care. Defendant also argued that plaintiffs' "theory that a broken stair caused [Patricia] to fall is based on speculation and conjecture."

The trial court granted defendant's motion, stating, in part:

> It is . . . clear that [Patricia] was a licensee. It's not contested from the depositions that Reverend Wagner retired effective September 1, 2002, but that the church then allowed Pastor Wagner and his wife to continue to reside in the parsonage for a short period until they were able to move into their new home. This is not something . . . that was negotiated as part of the retirement. It's not something that was part of his package when he came there to minister in this church. It is simply a request that was made by Reverend Wagner and the church graciously allowed him and his wife to stay in the parsonage until they found a new home. As such, there simply was no commercial benefit to the church. As such, the Wagner's [sic] were not invitees. They are licensees. . . . [T]here is only liability if the church knew or should have known of the condition. . . . This is simply a condition that [defendant] did not know about and even though [defendant] did the inspection, it was something that was not reasonably even discoverable . . . such that . . . [defendant] should have known of the condition.

On appeal, plaintiffs argue that the trial court erred in holding that they were licensees and therefore erred in concluding that defendant did not breach its duty of care with regard to the basement staircase. We review de novo a trial court's decision with regard to a motion for summary disposition. *Glass v Goeckel*, 473 Mich 667; 703 NW2d 58 (2005). Here, although defendant moved for summary disposition under MCR 2.116(C)(8) and (10), the trial court explicitly relied on MCR 2.116(C)(10) in granting the motion. As stated in *Coblenz v Novi*, 264 Mich App 450, 452-453; 691 NW2d 22 (2004),

> [a] motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support of a claim. A trial court may grant summary disposition if, after reviewing the evidence in a light most favorable to the nonmoving party, it determines that no genuine issue concerning a material fact exists and the moving party is entitled to judgment as a matter of law.

Plaintiffs claim that the trial court improperly concluded that they were licensees on defendant's property. The Supreme Court in *James v Alberts* 464 Mich 12, 19-20; 626 NW2d 158 (2001), quoting *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596-597; 614 NW2d 88 (2000), explained the different duties owed to different categories of individuals under premises liability law:

> "Historically, Michigan has recognized three common-law categories for persons who enter upon the land or premises of another: (1) trespasser, (2) licensee, or (3) invitee. Michigan has not abandoned these common-law classifications. Each of these categories corresponds to a different standard of care that is owed to those injured on the owner's premises. Thus, a landowner's duty to a visitor depends on that visitor's status.
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> A 'trespasser' is a person who enters upon another's land, without the landowner's consent. The landowner owes no duty to the trespasser except to refrain from injuring him by "wilful and wanton" misconduct.
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> A 'licensee' is a person who is privileged to enter the land of another by virtue of the possessor's consent. A landowner owes a licensee a duty only to warn the licensee of any hidden dangers the owner knows or has reason to know of, if the licensee does not know or have reason to know of the dangers involved. The landowner owes no duty of inspection or affirmative care to make the premises safe for the licensee's visit. Typically, social guests are licensees who assume the ordinary risks associated with their visit.
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> The final category is invitees. An 'invitee' is 'a person who enters upon the land of another upon an invitation which carries with it an implied representation, assurance, or understanding that reasonable care has been used to prepare the premises, and make [it] safe for [the invitee's] reception.' The landowner has a duty of care, not only to warn the invitee of any known dangers, but the additional obligation to also make the premises safe, which requires the landowner to inspect the premises and, depending upon the circumstances, make any necessary repairs or warn of any discovered hazards. Thus, an invitee is entitled to the highest level of protection under premises liability law." [Citations contained in *Stitt* omitted.]

Under *James, supra* at 19, quoting *Stitt, supra* at 596, if plaintiffs were licensees, defendant "'owe[d] no duty of inspection or affirmative care to make the premises safe,'" and defendant need only have warned plaintiffs about "'hidden dangers'" defendant knew or had reason to know of, if plaintiffs did "'not know or have reason to know of'" those dangers. If plaintiffs were invitees, however, then defendant owed plaintiffs a higher standard of care. *James, supra* at 19-20.

In *Stitt, supra* at 597, the Court indicated that "invitee status is commonly afforded to persons entering upon the property of another for business purposes." The Court stated that

> the owner's reason for inviting persons onto the premises is the primary consideration when determining the visitor's status: In order to establish invitee status, a plaintiff must show that the premises were held open for a *commercial* purpose. [*Id.* at 604 (emphasis in original).]

It is clear that if Patricia's fall had occurred during Lynn's employment with defendant, then she would be classified as an invitee. Indeed, defendant hired Lynn and paid him to be a pastor, and he and Patricia lived in the parsonage as part of Lynn's compensation. The pertinent question is

whether Patricia remained an invitee on October 15, 2002, even though Lynn's retirement took effect on September 1, 2002.

We conclude that there exists a triable question of fact with regard to this issue. See *id.* at 595 (explaining that, "[a]s a general rule, if there is evidence from which invitee status might be inferred, it is a question for the jury"). Defendant hired Lynn to be its pastor. Defendant then allowed plaintiffs to live in the parsonage after Lynn's retirement until they found a suitable new home. According to Lynn, this agreement was reached before he actually retired. While the extended period of tenancy was not explicitly contemplated in the original employment agreement between Lynn and defendant, a reasonable jury might conclude that the extended period of tenancy was viewed by the parties essentially as additional compensation for Lynn's prior work as a pastor. Indeed, this would be a reasonable inference under the circumstances. As noted in *Libralter Plastics, Inc v Chubb Grp of Ins Cos*, 199 Mich App 482, 486; 502 NW2d 742 (1993), "[c]ircumstantial evidence may be sufficient to establish a case."

The *Libralter* Court additionally stated that "parties opposing a motion for summary disposition must present more than conjecture and speculation to meet their burden of providing evidentiary proof establishing a genuine issue of material fact." *Id.* The Court stated that "[a] conjecture is simply an explanation consistent with known facts or conditions, but not deducible from them as a reasonable inference." *Id.* We believe that, given the circumstances and the timing of the events, it is a *deducible reasonable inference*, and not a mere conjecture, that the extended tenancy constituted part of Lynn's compensation. Moreover, it is reasonable to assume that if the tenancy was extended, then the accompanying characteristics of the tenancy (including the designation of Patricia as an "invitee" of defendant) were also extended. We conclude that the trial court erred in concluding that Patricia was a licensee of defendant as a matter of law.

Defendant contends that, even if Patricia is deemed to have been an invitee of defendant at the time of her accident, summary disposition was nevertheless appropriate because plaintiffs' theory that defective steps caused the fall is based on mere conjecture. Defendant alleges that "it is at least equally likely that plaintiff's bad knees caused her to fall . . . ." We disagree. Indeed, Patricia testified that she was walking carefully on the day in question and that she then felt her "feet rolling forward." Couchman testified that, immediately after Patricia's fall, she (Couchman) noticed that the third stair from the bottom had a freshly broken edge, and Couchman indicated that the stair had not been broken when she and Patricia started down the stairs before Patricia's fall. From this evidence, it is a *reasonable inference* that the broken stair, and not Patricia's knee condition, caused Patricia's fall. See *id.*

Moreover, if a jury were to deem Patricia an invitee, it could also reasonably conclude that defendant breached its duty to "inspect the premises and . . . make any necessary repairs . . . ." *Stitt, supra* at 597. Indeed, Ruth Bennett, a former member of defendant's Board of Trustees, testified that she inspected the premises in November 2001 but that the basement steps "were not

part of [her] inspection because they were not on the [written] list" she used while conducting the inspection.[2]

As a final matter, plaintiffs argue that the trial court erred in concluding that the evidence of a lack of a handrail on the stairs was irrelevant. We agree. First, we note that the documentary evidence established that, because the parsonage was constructed before a county building code went into effect, there was no statutory requirement that a handrail be provided. However, in *Dukes v Glen of Michigan*, 31 Mich App 500, 507; 188 NW2d 46 (1971), the Court stated that "the absence of handrails is competent evidence to be considered by the jury in determining if [a] defendant ha[s] provided reasonably safe premises for its business invitees." Here, given the deteriorating condition of the basement stairs, the lack of a handrail is pertinent information to be submitted to the jury, because a handrail might have heightened the safety of the weakened stairs.[3] *Id.* at 507-508. Defendant argues that the lack of a handrail was open and obvious. However, the deteriorating condition of the steps themselves constituted "special aspects" of the staircase that served to remove this case from the purview of the open and obvious doctrine. See, generally, *Lugo v Ameritech Corp*, 464 Mich 512, 517-518; 629 NW2d 384 (2001). Defendant additionally argues that "the lack of handrail was not the proximate cause of [the] . . . fall." However, Patricia specifically testified that, at the time of the fall, she felt herself "rolling forward and falling forward" and that the walls were "far away" and there was "nothing to grab. And so I just fell forward." From this evidence, it is reasonable to infer that the existence of a handrail might have prevented Patricia's fall or lessened the severity of her injuries. We conclude that evidence about the lacking handrail shall be admissible should this case proceed to trial.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kirsten Frank Kelly
/s/ Patrick M. Meter
/s/ Alton T. Davis

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[2] We disagree with the trial court's apparent conclusion that a weakened and prone-to-breaking stair was something that would not have been discoverable by defendant even if a proper inspection had been performed. A reasonable jury could conclude otherwise.

[3] In other words, a jury might reasonably conclude that defendant should have either repaired the weakened stairs *or* installed a handrail.